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Michael Chrisman
Secretary
California Natural Resources Agency
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Dear Secretary Bonner and Secretary Chrisman:

On behalf of the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA), we are writing to express our support for the advanced mitigation planning process described in the proposed "State of California Memorandum of Understanding Regarding Regional Advance Mitigation and Conservation Planning For Transportation and Flood Control Infrastructure Projects." The proposed MOU describes general goals and process steps to identify in advance compensatory mitigation needs and opportunities associated with construction projects to be completed by the California Department of Transportation and Department of Water Resources. The Corps and EPA have been participating in initial discussions of this project, referred to generally as the regional advance mitigation planning or "RAMP" process, for several months. The MOU is intended to build state-federal agency partnerships to advance the RAMP process and complete a pilot demonstration project.

We understand that several agencies have signed the MOU and that its proponents will be asking the Corps and EPA to sign the proposed MOU. As discussed below, we have decided not to sign the MOU but will continue to support and participate in the RAMP process as resources allow.

In 2008, the Corps and EPA issued final regulations to improve the quality and success of compensatory mitigation projects for activities authorized by permits issued pursuant to Clean Water Act Section 404 (73 FR 19594, April 10, 2008). The final regulations strengthen the planning, implementation, and management of compensatory mitigation projects by emphasizing

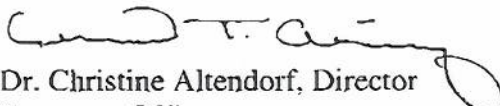
a watershed approach in selecting mitigation project locations, encouraging development of larger scale mitigation sites to address multiple project needs, and advocating advance mitigation planning.

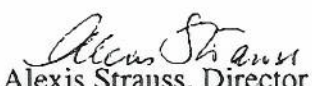
Consistent with the provisions of the new regulations, the Corps, EPA, and other state and federal resource agencies have implemented an interagency review team (IRT) process in each Corps District in California through which the reviewing agencies work with project proponents to streamline the review process and site and design mitigation activities to maximize environmental benefit. The IRT process enables agencies and project proponents to work together to devise mitigation approaches that address mitigation requirements under the federal Clean Water Act and Endangered Species Act along with associated State statutes. We have been and will continue to encourage the participants in the RAMP process to coordinate with the Corps and EPA through the IRT process as the proposed pilot project and associated activities are developed. We believe that by meshing the RAMP approach with the existing IRT process, our agencies will be able to most efficiently pursue our shared objectives of identifying and securing larger scale mitigation resources in advance that can be used to provide necessary compensatory mitigation for infrastructure construction activities.

We have decided not to sign the proposed MOU because its drafting is vague in several areas and some provisions appear duplicative of or potentially in conflict with existing requirements and procedures associated with the new Corps/EPA compensatory mitigation rule. Moreover, the MOU does not contain several types of standard language we need to see in MOUs we are asked to sign. As we are aware other agencies have already signed the MOU and the RAMP process can proceed without our agreement to the MOU, we have decided not to engage in a potentially lengthy MOU negotiation process that could slow progress in carrying out a pilot project. We would instead prefer to devote our limited available staff time to participate in RAMP discussions and help coordinate discussions of the RAMP initiative within the applicable IRTs in the coming months.

We look forward to our continued participation in the RAMP process and to its eventual success in targeting and securing advance mitigation sites. If you have questions, please call Michael Jewell at the Corps Sacramento District (916-557-6605) or David Smith at EPA's South Pacific Region (415-972-3464).

Sincerely,


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 24 July 2009
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